

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DIOMED, INC.,

Plaintiff,

v.

VASCULAR SOLUTIONS, INC.,

Defendant.

Civil Action No. 04-CV-10444-RGS

**DIOMED'S MOTION FOR LEAVE TO FILE A COMBINED
RESPONSIVE *MARKMAN* BRIEF IN EXCESS OF TWENTY PAGES**

Diomed respectfully requests leave of Court to file a combined responsive *Markman* memorandum on claim construction in excess of 20 pages.

Pursuant to the Court's scheduling order in this case and the related case, Diomed, Inc. v. AngioDynamics, Inc., Civ. No. 04-10019-RGS, Diomed is to file today its responsive *Markman* briefs. In the interests of judicial economy, instead of filing two separate briefs, Diomed is filing a **combined** response to the two defendants' opening briefs, in a single brief of 43 pages. (A counterpart to this motion, and a duplicate of the combined reply brief, is being filed in the parallel case inasmuch as they have not, to date, been consolidated.)

Given that AngioDynamics' opening *Markman* brief was 42 pages long, and that Vascular Solutions' opening *Markman* brief was 20 pages long, Diomed is now responding to over 60 pages of claim construction briefing by its adversaries. Diomed respectfully submits that doing so in a single brief of 43 pages is reasonable and appropriate. In total, Diomed will still have devoted considerably fewer pages to briefing these complex issues than have its adversaries.

RULE 7.1 CERTIFICATION

The undersigned certifies that Plaintiff's counsel conferred with counsel for both AngioDynamics and Vascular Solutions, and that AngioDynamics has consented to the relief requested and that Vascular Solutions has not.

Respectfully submitted,

DIOMED, INC.,

By its attorneys,

Dated: October 22, 2004

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